

OCT 08 2020

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*Fee Exempt Per Govt. Code § 6103*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

**WILL LIGHTBOURNE, DIRECTOR OF  
CALIFORNIA DEPARTMENT OF HEALTH CARE  
SERVICES,**

Plaintiff,

v.

**CARLOS FOY, as trustee of the MARIA  
SANCHEZ SPECIAL NEEDS TRUST, and  
individually; RICARDO SANCHEZ, as  
successor trustee of the MARIA SANCHEZ  
SPECIAL NEEDS TRUST, and  
individually; and DOES 1 through 10,  
inclusive,**

Defendants.

Case No.

**COMPLAINT FOR BREACH OF  
FIDUCIARY DUTY AND  
DECLARATORY RELIEF TO ENFORCE  
AND COLLECT MONEY DUE ON  
MEDI-CAL CREDITOR'S CLAIM**

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**PARTIES AND VENUE**

1. Plaintiff Will Lightbourne, Director of California Department of Health Care Services, brings this action in his official capacity and not otherwise.

2. The Department of Health Care Services (the Department) is the state department which is responsible for administering the California Medical Assistance Program (Medi-Cal).

3. Plaintiff is informed and believes and thereon alleges that defendant Carlos Foy was the trustee of the Maria Sanchez Special Needs Trust (Special Needs Trust) from the time of its creation to the time of its termination.

4. Plaintiff is informed and believes and thereon alleges that defendant Ricardo Sanchez was designated as the successor trustee of the Special Needs Trust from the time of its creation to the time of its termination.

5. Plaintiff is informed and believes and thereon alleges that defendants Carlos Foy and Ricardo Sanchez are designated as recipients of decedent Maria Sanchez's (Decedent) property under the Special Needs Trust, and received Decedent's property either by distribution or survival.

6. Plaintiff is informed and believes and thereon alleges that upon the termination of the Special Needs Trust, defendants received property from the Special Needs Trust and improperly distributed the remaining Special Needs Trust assets in breach of their fiduciary duties to the Department, and in violation of the terms established pursuant to the Special Needs Trust.

7. Plaintiff is informed and believes and thereon alleges that defendant Carlos Foy resides at 300 North Kalorama Street, Ventura, California 93001.

**DOE DEFENDANTS**

8. Defendants Does 1 through 10, inclusive, are sued herein under these fictitious names. Their identities are presently unknown to plaintiff. Plaintiff is informed and believes and thereon alleges that each of the defendants designated as a Doe is legally responsible in some manner for payment of the amount claimed by Plaintiff in the cause of action against the

1 named defendants. Plaintiff will amend this complaint to name these Doe defendants when  
2 their identities have been ascertained.

### 3 STATEMENT OF LAW

4 9. Existing law establishes the federal Medicaid Act, which provides states with the  
5 framework for providing the impoverished with free or reduced-cost medical assistance. (See  
6 42 U.S.C. § 1396 et seq.)

7 10. California's version of the federal Medicaid program is Medi-Cal.

8 11. In certain circumstances, the federal Medicaid Act requires states to seek  
9 reimbursement of the funds paid after the death of the Medicaid recipient.

10 12. Title 42 United States Code section 1396p(d)(4)(A) provides that "States, upon the  
11 death of the Medicaid beneficiary, or upon the termination of the Medicaid beneficiary's special  
12 needs trust, are entitled to reimbursement from the trust for medical assistance payments made  
13 on behalf of the trust beneficiary under the State's program."

14 13. Under California law, the Department is also entitled to reimbursement for Medi-  
15 Cal services rendered during the existence of a special needs trust, as set forth in Probate Code  
16 section 3605, which provides in part:

17 (b) While the special needs trust is in existence, the statute of limitations otherwise  
18 applicable to claims of the [Department] . . . is tolled. Notwithstanding any  
19 provision in the trust instrument, at the death of the special needs trust beneficiary  
... the trust property is subject to claims of the [Department] . . .

20 14. Probate Code section 3605, subdivision (c), provides that: "At the death of the  
21 special needs trust beneficiary . . . the trustee *shall* give notice of the beneficiary's death . . . to  
22 . . . the [Department] . . . addressed to the director . . . at the Sacramento office of the director."  
23 (Emphasis added.)

24 15. Probate Code section 3605, subdivision (d), provides that: "Failure to give the  
25 notice required by subdivision (c) prevents the running of the statute of limitations against the  
26 claim of the [Department] . . . not given the notice."  
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16. Probate Code section 3605, subdivision (f), provides that: “If trust property is distributed before expiration of four months after notice is given without payment of the claim, the [D]epartment . . . has a claim against the distributees to the full extent of the claim, or each distributee’s share of trust property, whichever is less . . . [and] includes interest.”

## STATEMENT OF FACTS

17. Plaintiff is informed and believes and thereon alleges that defendants filed a petition with the Ventura County Superior Court, in case number 56-2012-00411328, to approve the Special Needs Trust, which named decedent Maria Sanchez as the trust beneficiary and defendant Carlos Foy as the trustee.

18. Plaintiff is informed and believes and thereon alleges that on or about April 22, 2013, Judge Fredrick H. Bysshe, Jr. of the Ventura County Superior Court approved defendants' petition for approval of the Special Needs Trust.

19. Paragraph 2.6 of the approved Order for Distribution of Funds After Settlement into a Special Needs Trust states in pertinent part that:

Upon the death of Beneficiary . . . the Trustee *shall* give notice of Beneficiary's death or the termination of the Trust, pursuant to California Probate Code section 3605, in the manner provided in California Probate Code section 1215, to . . . the [Department] . . . addressed to the director . . . at the Sacramento office of the director. . . . Pursuant to 42 USCA section 1396p(d)(4)(A), the state will receive all amounts remaining in the trust upon the death of Beneficiary up to an amount equal to the total medical assistance paid on behalf of Beneficiary . . . *the Department . . . shall be the first remainder beneficiary and shall receive all assets remaining in the Trust up to an amount equal to the total medical assistance paid on behalf of Beneficiary, by Medi-Cal.* The Department . . . is not obligated to submit any type of claim in order to be reimbursed . . . *It is the intent of these provisions to comply with federal and state laws regarding the distribution of the Trust estate upon death of Beneficiary who has received state or federal benefits during [her] lifetime.*

(Emphasis added.)

20. From on or about February 1996 to on or about August 2014, the Department, through the Medi-Cal program, paid the sum of \$194,500.61, for health care services and for health care premiums on behalf of Decedent.

1           21.       Plaintiff is informed and believes and thereon alleges that Decedent died on or  
2 about August 19, 2014. Accordingly, the Special Needs Trust terminated on August 19, 2014.

3           22.       Plaintiff is informed and believes and thereon alleges that upon termination of the  
4 Special Needs Trust, the Special Needs Trust consisted of property with an unknown value.

5           23.       Defendants had a duty to notify the Department of the termination of the Special  
6 Needs Trust, pursuant to Probate Code sections 3604 and 3605 and pursuant to the terms of the  
7 Special Needs Trust at paragraph 2.6.

8           24.       Defendants never notified the Department of the termination of the Special Needs  
9 Trust, as required by statute and the terms of the Special Needs Trust.

10          25.       In September 2018, the Department discovered Decedent's death through a routine  
11 periodic check on the Medi-Cal Eligibility Data System (MEDS).

12          26.       On or about October 2, 2018, the Department sent a letter to defendant Foy,  
13 demanding payment for the amount of health care services and health care premiums expended  
14 on behalf of Decedent from the remainder of the Special Needs Trust, pursuant to Probate Code  
15 section 3605.

16          27.       On or about October 11, 2018, defendant Foy, through his counsel, Cristian  
17 Arrieta, Esq. sent a letter to the Department, stating that the Special Needs Trust was exhausted  
18 of all funds as of 2015. The letter also stated that the Department "was not previously notified  
19 by inadvertence" and directed all future correspondence regarding the Department's claim to  
20 defendant Foy's counsel.

21          28.       Defendants never paid the Department's claim despite multiple letters sent on or  
22 about October 19, 2018, April 19, 2019, August 15, 2019, November 5, 2019, November 19,  
23 2019, and March 30, 2020, demanding payment for the amount of health care services and  
24 health care premiums expended on behalf of Decedent.

25          29.       Plaintiff is informed and believes and thereon alleges that upon termination of the  
26 Special Needs Trust pursuant to Decedent's death, defendant Foy distributed the remainder of  
27 the Special Needs Trust without notifying the Department.  
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30. Plaintiff is informed and believes and thereon alleges that defendants received the remainder of the Special Needs Trust before satisfying the Department's claim of \$194,500.61.

31. Defendants' failure to notify the Department upon termination of the Special Needs Trust "prevents the running of the statute of limitations against the claim" pursuant to Probate Code section 3605, subdivision (d).

32. Plaintiff is entitled to repayment from defendants and any later identified Doe defendants in the amount of \$194,500.61.

33. No part of the \$194,500.61 owing on plaintiff's claim has been paid to plaintiff by defendants or any person, and all of said sum remains due, owing, and unpaid.

34. Plaintiff is entitled to priority in the payment of the claim pursuant to Probate code section 3605, subdivision (e).

**FIRST CAUSE OF ACTION**

**(Breach of Fiduciary Duty)**

35. Plaintiff hereby repeats and re-alleges all preceding paragraphs and incorporates the same as though fully set forth herein.

36. Pursuant to Probate Code section 3605 and the terms of the Special Needs Trust, defendant Foy, as trustee of the Special Needs Trust, and defendant Sanchez, as successor-trustee of the Special Needs Trust, owed a fiduciary duty to the Department, to notify the Department upon the Decedent's death and termination of the Special Needs Trust.

37. Pursuant to the terms of the Special Needs Trust, defendant Foy, as trustee of the Special Needs Trust, and defendant Sanchez, as successor-trustee of the Special Needs Trust, owed a fiduciary duty to file accounts and reports for court approval in the manner and frequency required by Probate Code sections 1060 et seq. and 2620 et seq.

38. Pursuant to federal law, state law, and the terms of the Special Needs Trust, defendant Foy, as trustee of the Special Needs Trust, and defendant Sanchez, as successor-trustee of the Special Needs Trust, owed a fiduciary duty to first distribute to the Department all amounts remaining in the Special Needs Trust upon Decedent's death, up to an amount equal to

1 the total medical assistance paid on behalf of Decedent, before any other distributions can be  
2 made from the remaining trust assets.

3 39. Defendant Foy and defendant Sanchez breached their fiduciary duties to the  
4 Department by failing to inform the Department of Decedent's death, failing to file accounts  
5 and reports for court approval of his administration of the Special Needs Trust, failing to  
6 distribute the remaining trust assets to the Department upon the termination of the Special  
7 Needs Trust, and improperly distributing the remaining trust assets in violation of the Special  
8 Needs Trust.

9 40. As a proximate result of said acts, plaintiff has been damaged in a sum to be  
10 proven at the time of trial and interest that has accrued thereon.

## 11 **SECOND CAUSE OF ACTION**

### 12 **(Declaratory Relief)**

13 41. Plaintiff hereby repeats and re-alleges all preceding paragraphs and incorporates  
14 the same as though fully set forth herein.

15 42. An actual controversy now exists between the parties regarding their rights and  
16 responsibilities under federal and state law and the terms of the court-approved Special Needs  
17 Trust. Plaintiff requests a declaration that the Department is entitled to repayment of its claim  
18 in the amount of \$194,500.61 pursuant to Probate Code section 3605 from any remaining trust  
19 assets or property purchased with the remaining assets of the Special Needs Trust.

## 20 **PRAYER FOR RELIEF**

21 WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as  
22 follows:

- 23 1. The sum of \$194,500.61, plus interest and other accruing costs;
- 24 2. Special and consequential damages and interest there on in an amount to be proven at  
25 the time of the trial;
- 26 3. A declaration of the rights of the parties;
- 27 4. Costs of suit incurred herein;
- 28

- 1 5. A Statement of Decision pursuant to Code of Civil Procedure section 632, specifically  
2 stating the factual and legal basis for the Court's decision as to each of the principal  
3 controverted issues in this case; and  
4 6. For such other and further relief the Court deems just and proper.  
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6  
7 Dated: October 7, 2020

Respectfully Submitted,

8 XAVIER BECERRA  
9 Attorney General of California  
10 JENNIFER M. KIM  
11 Supervising Deputy Attorney General

*/s/ Jacquelyn Young*

12 JACQUELYN Y. YOUNG  
13 Deputy Attorney General  
14 *Attorneys for Plaintiff Bradley Gilbert,*  
15 *Director of California Department of Health*  
16 *Care Services*

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19 **THIS COMPLAINT IS DEEM VERIFIED PURSUANT TO CODE OF CIVIL**  
20 **PROCEDURE SECTION 446. IF YOU FILE AN ANSWER, IT MUST BE VERIFIED.**  
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